

October 24, 2002

The Honorable Robert O'Farrell, Presiding Judge  
Superior Court of California, County of Monterey  
240 Church Street  
Salinas California 93901

Dear Judge O'Farrell:

Following an investigation that commenced at the beginning of the term of the 2002 Civil Grand Jury last January, we are now releasing a final mid-year report on the availability of water on the Monterey Peninsula and the role of the Monterey Peninsula Water Management District.

At the outset we did not anticipate that Measure B would be placed on the ballot for the general election set for November 5, 2002, asking district voters whether the district should be dissolved. We acknowledge that citizens within the district will receive information from many sources, pro and con, on Measure B and the desirability of continuing with or dissolving the Monterey Peninsula Water Management District. This free flow of information is at the heart of our democracy. The facts which we gathered over the course of the year are relevant to the public's consideration of this issue, and we have therefore determined it is our duty to share our information and analysis with our fellow citizens now, when what we have learned may prove useful to those citizens, rather than wait until the publication of our year-end final report on the many other subjects we have studied.

Sincerely,

Daniel I. Reith, Foreman  
2002 Monterey County Civil Grand Jury

# **AVAILABILITY OF WATER ON THE MONTEREY PENINSULA**

## **The Role of the Monterey Peninsula Water Management District**

### **INTRODUCTION**

Early in the term of the 2002 Civil Grand Jury, it began analyzing availability of water in Monterey County. Part of the investigation involved the functioning of the Monterey Peninsula Water Management District (MPWMD). Subsequently, Measure B was placed on the November 5<sup>th</sup> 2002 ballot, asking district voters whether the MPWMD should be dissolved. The Grand Jury therefore decided to issue this mid-year final report to share its research on this subject with the public.

### **SUMMARY**

Based upon the County General Plan update, agricultural water needs, both current and forecasted, are being met by existing and planned sources. This has not been the case on the Monterey Peninsula for new commercial projects, residences on house lots without private wells<sup>1</sup>, or for residential additions involving additional water outlets that would otherwise be routinely approved. In most cases new water permits are not currently available and existing permits cannot be transferred from existing approved locations.

An investigation into the availability of water in Monterey County was initiated by the Grand Jury in response to a formal complaint as well as to comments by mayors and staff of Monterey Peninsula cities. The Grand Jury acknowledges that issues involving the utilization and augmentation of the water supply are policy matters within the domain of publicly elected officials and independent agencies. However, the Grand Jury is exercising its mandate<sup>2</sup> to investigate and report on the operations and functions of county, cities, and special districts, and has limited its findings to the effectiveness of the governmental entities involved, without regard to the policies they currently favor.

The Grand Jury finds that a water storage and delivery problem exists in Monterey County. There are sufficient outflows from the Salinas and Carmel Rivers<sup>3</sup> that if stored for future use, could serve the needs of residences and businesses over the next General Plan period. In addition to storage, new delivery infrastructure is required to supply this water where needed in both the North County area and the area served by the California American Water Company (Cal Am).

Efforts at conserving water, fostered by Monterey Peninsula Water Management District (MPWMD) and Cal Am, have been effective, and the Peninsula is now rated as having among the state's lowest per-capita water usage. The MPWMD, through its February 2002 ban on transferring existing granted water credits, is potentially impeding new

---

<sup>1</sup> 2 acres is the currently required minimum for construction of a private well.

<sup>2</sup> California Penal Code Section 925

<sup>3</sup> See Appendix B

development. The cities<sup>4</sup> within the MPWMD comprise a majority of the population and have responded by filing suit<sup>5</sup> challenging the ban on the transfer of water credits<sup>6</sup>. The MPWMD has been in existence since 1978 and has yet to accomplish one of its primary goals – augmenting the water supply, and, based upon its current planning schedule, it appears unlikely to do so during the next several years.

## **PROCEDURE AND METHODOLOGY**

The Grand Jury utilized the following resources in gathering information pertinent to the issue:

1. Interviews with mayors and members of the Board of Supervisors.
2. Interviews with officials of the MPWMD and review of its Board meeting minutes.
3. Interviews with an official of the Monterey County Water Resources Agency and review of its Board meeting minutes.
4. Interview with an official of the Cal Am Water Company.
5. Review of applicable sections of the California Water Code<sup>7</sup> (enabling water district legislation).
6. Review of former Grand Jury reports and responses.
7. Review of formal complaints filed with the Grand Jury.
8. Review of State Water Resources Control Board order.
9. Review of the 1998 Environmental Impact Report for the proposed Carmel River Dam and Reservoir.
10. Attendance at public hearings on water-related matters.

---

<sup>4</sup> Monterey, Carmel, Seaside, Del Rey Oaks, Sand City, Pacific Grove. 2000 population = 83,000. est. unincorporated areas = 26,000.

<sup>5</sup> City of Seaside et. al. v. MRWMD, Monterey Co. Superior Court Case #M59441. Filed May 28, 2002.

<sup>6</sup> MPWMD Ordinance #102, enacted Feb.28, 2002.

<sup>7</sup> Water Code Appendix, Chapter 118

## BACKGROUND AND DISCUSSION

While both private companies and local government entities may provide water, the water supply is under the governance of the State Water Resources Control Board (SWRCB). The State Public Utilities Commission (PUC) approves the rates that can be charged to the public. Other agencies have jurisdiction over matters that may directly affect the supply of fresh water (see appendix A). The Monterey Peninsula Water Management District is the agency with jurisdiction over fresh water within its specified boundaries (See Appendix B), which encompass large portions of the Monterey Peninsula and Carmel Valley.

Approximately 80% of all water usage in Monterey County is for agriculture and industry. Of the remaining 20% used by residences, it is estimated that 60% is used externally (lawns, gardens, etc.) and 40% for internal purposes (cooking, laundry, showers, toilets, etc.). The availability of water for agricultural, commercial and residential uses has been a concern of most areas of Monterey County for several decades. In areas where the situation was viewed as critical, the State legislature authorized two new water districts impacting Monterey County. In 1978, the MPWMD<sup>8</sup> was formed, encompassing much of the Monterey Peninsula and the Carmel Valley watershed area (see Appendix B), with mandates to augment the water supply and promote conservation and reuse, while fostering the Carmel River basin's environmental, ecological and recreational values. The District is governed by a seven-member Board of Directors, five elected from voter divisions, one member of the Monterey County Board of Supervisors, and one elected official or chief executive officer appointed by a committee comprised of mayors from jurisdictions within the District boundaries. According to testimony from those familiar with the enabling legislation, a primary rationale for the establishment of the MPWMD in 1978 was to have an agency capable of funding a new dam on the Carmel River, a project then considered too expensive to be funded by the local water purveyor.

During its existence, the MPWMD has spent in excess of \$50 million<sup>9</sup>, primarily from the 7.125% user fee on water bills, taxes on real property taxes and permit fees. While assisting Cal Am with conservation efforts, it has yet to achieve its primary purpose – augmenting the District's water supply<sup>10</sup>. In 1995, the SWRCB found that current usage of water from the Carmel River exceeded the Cal Am Water Company's rights and issued Order #95-10 mandating that Cal Am reduce its usage of Carmel River water until the entire 'deficit'<sup>11</sup> could be replaced (then estimated to take seven years).

Cal Am provides water to 25% of County residents. Two-thirds of its water supply comes from groundwater and surface flows associated with the Carmel River. The capacity for

---

<sup>8</sup> Monterey Peninsula Water Management District-CA Water Code Appendix, Chapter 118.

<sup>9</sup> Recent estimates (9/16/02 Carmel Pine Cone) place this figure at close to \$100 million.

<sup>10</sup> First item in MPWMD mission statement and preamble of enabling legislation.

<sup>11</sup> The 'deficit' is 10,730 acre feet.

storage of water from the Carmel River watershed has declined from its original 6,000 to 2,600 acre-feet, due to the natural silting process filling up the existing Los Padres and San Clemente reservoirs. In a year of average rainfall, over 50,000 acre feet of water from the Carmel River flows through the Carmel River Channel and into the ocean. The SWRCB has stated that a river flow of 20 cubic feet/second (15,000 acre-feet annually) is the amount necessary to adequately maintain a healthy fish and wildlife environment<sup>12</sup>. To capture the “surplus” run-off, Cal Am has in the past proposed, as its preferred and lowest cost solution to the water supply and storage problem, building a new dam that would create a 24,000 acre-foot reservoir (about a two year supply) encompassing the existing Los Padres facility<sup>13</sup>.

Cal Am has been unsuccessful to-date in getting state and federal approvals for this new reservoir. It is currently proposing a 15,000 acre-feet (or greater) desalination facility that would satisfy both the deficit and forecasted growth targets of the affected communities. While this alternative is estimated to provide water at a 50% higher cost than the reservoir, it is considered a less controversial solution, with a higher likelihood of rapid approval. Cal Am is currently a subsidiary of a company based in the United Kingdom, itself in-turn owned by a company based in Germany. Cal Am, as a result of being acquired, is now apparently capable of obtaining the financing necessary for the building of either a new reservoir or desalination facility. In the case of both the reservoir and the desalination plant, the construction costs would be paid by Cal Am, but these costs plus the operating expenses and a profit would be recovered in the price of the water eventually paid by the ratepayers.

Based upon the river outflow data, the experts interviewed by the 2002 Grand Jury agree that there are sufficient water resources to serve the needs of the local residences<sup>14</sup> and businesses over the next General Plan period as well as providing for the well being of the affected fish and wildlife habitats. They also agree that new water storage and delivery infrastructure must be built to supply this water where and when needed.

A degree of success had been achieved in the effort by Cal Am and MPWMD to conserve water. However, residences within Monterey County are currently among the lowest water users in the state<sup>15</sup>. While the residential users tend to be cooperative, there appears to be only limited savings possible by attempts to further reduce water consumption.

The MPWMD has spent in excess of \$15 million in studies of alternative water supplies, and its Plan A, a proposed larger Los Padres reservoir and dam, was defeated in a voter referendum in 1995; and after being proposed again in 1998, was shelved by Cal Am because future acceptance by the voters was deemed unlikely. Earlier, in 1993, an interim desalination plant was proposed, but it also failed to win voter endorsement.

---

<sup>12</sup> *SWRCB Meeting Minutes*, March 21, 2002, page 10.

<sup>13</sup> *Cal Am EIR*, 1999, Cal Am EIR 1993.

<sup>14</sup> An average residence uses 0.25 Acre-Feet annually.

<sup>15</sup> *California-American Water Company, Monterey Division – Urban Water Management and Water Shortage Contingency Plan 2000 – 2005*, Chula Vista, CA, Cal-Am Water Co. pg. 19.

As reflected in their General Plans, Monterey Peninsula cities strive for continued economic development, driven by their need to balance the state-mandated requirement to supply additional housing (which in general does not provide enough tax revenue to fund necessary municipal services) with commercial and industrial projects that require fewer services and can provide the additional tax revenues. This development frequently requires reassignment (transfer) of existing granted water credits. In February, 2002, the MPWMD issued an ordinance banning the transfer of water credits. This action was met with the filing of a lawsuit by most of the affected cities, challenging the ban.

Looking toward the future, MPWMD's most recent strategic planning workshop documents indicate it will be another two or three years (2004 – 2005) to merely have a plan approved for augmenting the water supply, with the implementation of such a plan being typically many more years out into the future.

## **FINDINGS**

1. Based on river outflows alone, there exists sufficient fresh water, to meet the current and projected needs of residential, business and agriculture within Monterey County.
2. Delivering water to approved projects and users is not limited by technical problems or lack of supply, but by questions as to water rights, state and federal regulations, as well as the expense of the necessary infrastructure.
3. Having MPWMD as a special water district, with a majority of its board independently elected places another independent political entity between the affected populace and the existing political structure of cities, as well as the County.
4. The General Plans of the Monterey Peninsula cities assume an adequate water supply to achieve their growth goals, and, by not supplementing the existing water supply or allowing the transfer of existing granted water credits, the Water District has impeded implementation of the general plans of the affected cities and County areas.
5. A primary rationale for the establishment of the MPWMD in 1978 was to have an agency capable of funding a new dam on the Carmel River. At this time it appears that Cal Am (which was recently acquired by a larger entity with greater financial resources) is now capable of independently financing a new water supply solution and has publicly stated its intention to do so.

## **NO RESPONSE REQUIRED**

## **OTHER INFORMATION SOURCES**

1. *Supplemental Environmental Impact Report (SEIR) for the Carmel River Dam and Reservoir Project*, Monterey, CA, MPWMD 1998
2. *California American Water Company Monterey Division – Urban Water Management and Water Shortage Contingency Plan 2000 – 2005*, Chula Vista, CA 1999, Cal-Am Water Co.
3. *Monterey County Environmental Impact Report –Public Review Draft, Water Supply and Demand, Monterey County General Plan Draft Update, Salinas, 2002*

## **GLOSSARY**

Aquifer = water bearing rock formation

、 Acre-Foot = 43,500 cubic feet = 325,851 gallons

## **APPENDIX A – Agencies with jurisdiction over water related matters**

### **Federal**

- US Army Corps of Engineers
- US Fish and Wildlife
- National Marine Fisheries Service

### **State**

- California Public Utilities Commission
- California Water Resources Board
- California Department of Fish and Game
- California Coastal Commission

### **County**

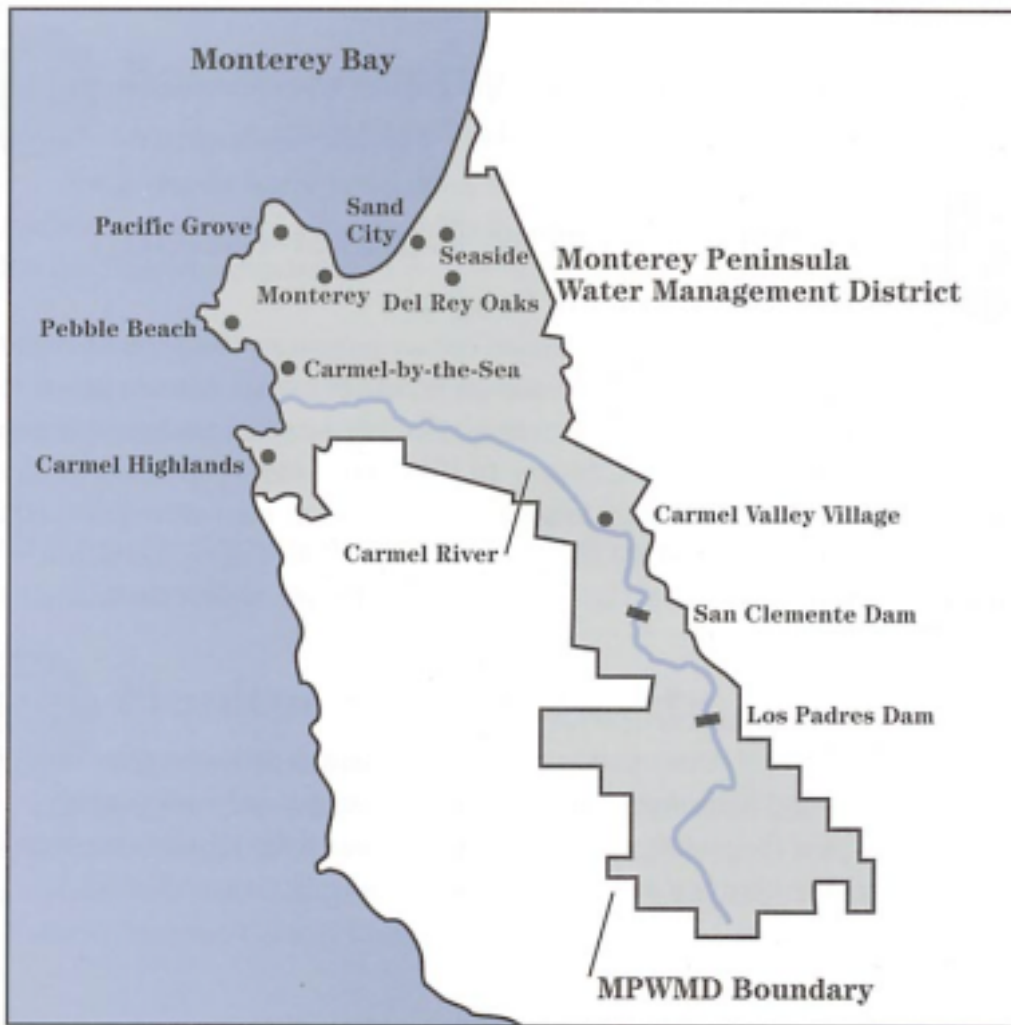
- Monterey County Water Resources Agency

### **Special Districts**

- Monterey Peninsula Water Management District - sets water policy within its jurisdiction



## Appendix B – Carmel River Water Supply and Usage



### Reservoir Storage

Los Padres	2,000 Acre-Feet
San Clemente	3,000 Acre-Feet
Silting has reduced total capacity to	2,600 Acre-Feet (estimated)

### Annual River outflow

Carmel River (typical year)	50,000 Acre-Feet
Carmel River (in an El Nino year)	Over 150,000 Acre-Feet
Salinas River (typical year)	250,000 Acre Feet

**Flow necessary to sustain fish** 15,000 Acre-Feet

**Annual usage in district** less than 20,000 Acre-Feet  
(Over 11,000 from the Carmel River & associated aquifers)